

Approved 5/2/07

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
April 11, 2007**

Board Present: Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, Attorney Greg Cunningham, CEO Scott Bickford and Recording Secretary Crystal Robinson

Absent: None

Also Present: Wayne Crandall, Chet Knowles and James Tower

Chairman Remian called the meeting to order at 7:02 P.M.

1. Election of Officers:

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Ellis, to nominate Dan Remian as chair, Frank Muddle as vice-chair and Evelyn Kalloch as secretary.
Carried 5-0-0

2. Call to Order: Chairman Remian took a roll call.

3. Minutes of 2/7/07 and 3/7/07:

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Muddle, to approve the minutes of the 2/7/07 meeting.
Carried 5-0-0

Mr. Ellis asked that the next-to-last sentence in the 4th Paragraph on Page 2, be corrected to read, "Mr. Ellis contended that the Board had been operating under the old map that did not show RP on Lot 10; therefore, the PB could not prove an alternate route outside RP because it did not, at that time, know where RP was located." Mr. Remian asked that Page 1, Item 4, second sentence be adjusted to read, "He reported Mr. Cunningham's opinion that, based on DEP's position, last meeting's vote on this application ~~should~~ could be reconsidered." He also asked that the last sentence in the last paragraph of Page 1 be corrected to read, "Mr. Remian reiterated that both Mr. Cunningham and Mr. Baker felt the decision ~~should~~ could be reconsidered."

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, to approve the minutes of the 3/7/07 meeting as corrected.
Carried 5-0-0

4. Review of 2/7/07 Decision Regarding Meduncook Plantation Subdivision, Map 5, Lot 26 and Lot 84 (portion):

Mr. Cobey stepped down because he was not present at the discussions that terminated in the decision being reconsidered. Mr. Ellis referred to a letter from the DEP's Rich Baker on 3/19/07, in particular the sentence, "However, I am pleased to learn that the Planning Board, on its own initiative, decided to reconsider its earlier decision." Mr. Ellis stated that he did not feel the PB had done so on its own initiative, but that Mr. Baker's previous letter had initiated the action. Mr. Ellis asked how the Board would proceed and the chairman said he would like to know how the members felt about reconsideration and what they would want to include in such an action. Mr. Ellis responded that he had gone through the relevant review the PB had performed and suggested each member state upon what he had based his vote. Mr. Ellis said he had researched each step and felt the crux of the review depended on the Board's finding on Section 15(G)(4) regarding new roads. Mr. Ellis provided, for the record, a written analysis of the questions that he had found most relevant, as well as his conclusions on each point (see attachment). He cited that advice had been received from the PB counsel, the MMA and Mr. Baker. Mr. Ellis proceeded to read his analysis aloud, concluding with his belief that the applicant had met the requirements to build a road in the proposed location. Mr. Remian thanked Mr. Ellis for his clear and thorough analysis. He said he felt that Mr. Baker had suggested the road be at the 250' Shoreland Zone [SZ] setback line and was not further back, as Mr. Ellis had stated in #5 of his review. Mr. Ellis said the map did not support this.

Chairman Remian asked attorney Cunningham for his comments on Mr. Ellis' statement that there was no provision in the regulations allowing the PB to require that an alternate route go through a previously approved lot. Mr. Cunningham said he felt it was accurate that the regulations did not expressly deal with that circumstance. He recalled an earlier discussion of whether or not other land controlled by the applicant would be susceptible to the location of an alternate route. This had led to the question of whether Lot 10 was under Mr. Tower's control and the PB had requested a copy of the Purchase & Sales Agreement. Mr. Cunningham said he did not see why the existence of a previously approved lot would place a limitation upon the applicant. If this were so, Mr. Cunningham suggested that future applicants would limit route alternatives by having lots approved first and routes second, thus limiting the alternatives. Mr. Ellis stated that premeditation was not the case here, because Mr. Tower had not owned the land (proposed Lot 26) at the time the other lots were approved. Mr. Cunningham said the Board's question had been whether Mr. Tower controlled Lot 10 when he applied for the relocation and, if he did, why couldn't he locate an alternate route across it? Mr. Remian said that had been at the Public Hearing in August 2006.

Mr. Muddle said he had been concerned that the PB was causing harm by running a road through an existing pre-approved lot, which could result in legal action against the town. He said Mr. Cunningham had now clarified that and perhaps it was not the overall concern. That left Mr. Muddle with the problem that he did not see the 250' line denoted on Lot 10, clarifying that the area in front of it was RP. He said the PB had never been presented with anything definitive in a study or analysis, or demanded or required that the applicant submit studies showing why that was not applicable, so there was no alternative presented. The only discussion Mr. Muddle remembered was that this area of possibility was discussed in the meeting and the response from the applicant had been that the area had slopes that were RP. With no reasonable alternative to consider, Mr. Muddle had voted to support the application. Mr. Ellis said that on December 6, 2006 the PB had voted to rescind the previous motion to require the alternate route and the P&S agreement; he and Mrs. Kalloch had abstained because they had not been present when the motion asking for those two items had been voted.

Mr. Remian said he had based his conclusion on a review during a site walk for Lot 26, the fact that Mr. Baker felt that area was a possibility outside of RP and the fact that the three alternate routes presented were all realignments of the present driveway through Lot 26. He felt this did not satisfy what the Board had requested, so he had voted in the negative. Mrs. Kalloch said she had abstained because she was not 100% clear on the road and RP. Mr. Cunningham said he agreed with Mr. Ellis' thought that if there were a request for a route through RP on an approved lot, an applicant could show it was out of his control or present evidence that such a route would render the lot un-buildable and the PB would have to consider that; there was no clear cut answer as to what was practicable.

Chairman Remian asked how many people on the Board had actually seen the possible route through Lot 10 that Mr. Baker mentioned. Mr. Ellis said he thought none of the members had known exactly what Mr. Baker was talking about. Mr. Tower said he had provided the PB with a drawing that included topography on Lot 10 and a portion of Lot 9; this indicated there were slopes in the area that presented as much of a physical barrier as the route he had suggested. While he did not provide the copy of the P&S that the Board had requested, the developer said, they did have testimony from real estate agent Carlton Johnson that the agreement existed and had a lot of conditions. Mr. Tower stated that the P&S agreement was still in effect. He said he assumed that Mr. Baker had talked about continuing the driveway that led to Lot 9, but the drawing showed only a small buildable plateau on Lot 9. He concluded that extending that driveway would reduce the available building area, as well as go through the area on Lot 10. Mr. Tower said he genuinely believed his negotiations and compromises with the Board to reduce the width of the access had demonstrated a reduced impact.

Mr. Tower indicated his willingness to visit the site with the Board again and Mr. Remian responded that he felt that a site walk was justified. Mr. Muddle concurred and CEO Bickford said he thought Mr. Baker should also be invited. Mr. Ellis asked if a route outside RP were feasible and Mr. Tower answered in the negative. There was a brief discussion of route possibilities, referring to points on the drawing. Chairman Remian asked the applicant if the Board could have a copy of the P&S and Mr. Tower answered in the affirmative. A site walk was scheduled for Thursday, April 26 at 8:00 or 9:00 A.M. Mr. Remian remarked that Dan Staples and the Army Corps also wanted to set something up with Mr. Tower on the same day. Mr. Cunningham advised that no deliberation or vote should be undertaken until the next PB meeting, when the public could attend and the CEO cautioned against any discussion or comments until that time. Mr. Ellis asked if Mr. Tower could show the Board the 250' line on the ground. Mr. Cunningham said it should be made clear to the applicant that he could submit additional evidence as part of this process. Mr. Remian said that producing the P&S might alleviate all the problems. Wayne Crandall, Mr. Tower's attorney, asked if the name of the buyer could be redacted from the copy. Mr. Cunningham replied that he thought the Board could look at it with the buyer's name and purchase price blocked out.

ACTION: Mr. Remian made a motion, seconded by Mrs. Kalloch, to table the decision on Lot 26 until the May 2nd meeting
Carried 5-0-0

5. Robbins Mountain Subdivision, Review for Completeness, Map 5, Lots 84, 85 and 86: *Mr. Cobey returned to the Board.* Chairman Remian noted that the PB had asked Mr. Tower to resubmit a complete application package for review. Mr. Ellis noted two letters for the record: the first, dated 3/20/07, to the CEO from abutter Patrick Cardon and the second to abutters from Maine Boundary Consultants concerning Mr. Cardon's survey. Mr. Ellis read both letters aloud for the record. Mr. Cardon outlined a disagreement over the location of the property line between Lots 81 and 83. Mr. Cardon said he had retained legal council and asked the PB not to approve any property development that might impinge or encroach on the disputed property line until the concerned property owners had reached an agreement. The letter from Maine Boundary Consultants notified abutters that it had completed a survey and recorded it on 2/2/07.

CEO Bickford reported that the applicant believed that his subdivision proposal would not affect the property line in question. Mr. Bickford said he believed the PB should not be involved in civil matters between property owners; however, a single property line could affect many properties and the PB was obligated to protect the interests of potential buyers. Mr. Cunningham advised that if the PB had a deed that appeared to contain the land involved in the subdivision, its analysis ended there. The Board should not involve itself in disputes between surveyors as to precise locations of lines. He said the Board should act on the representations made to it by the applicant and, though it could ask for further evidence if it saw an inconsistency in the deed, it was not liable. In response to a question from Mr. Muddle, the PB attorney said the Board could ask the applicant to represent to it whether the deed and his plan were consistent.

Mr. Bickford said he had not reviewed the application for completeness. Mr. Muddle said he had several questions regarding potential problems. First, three or four lots did not have sufficient frontage and six lots did not have the required 100' circle. Mrs. Kalloch said some lots had only a ROW and Lot 9 had only a small buildable area; additionally, there were possible spaghetti and flag lots. Mr. Cobey added that he saw no recommended well locations. He also said some contours were not legible, the request to IF&W did not show the Georges River frontage and appeared to refer only to Lot 26 in terms of significant habitat assessment. Finally, Mr. Cobey said there was no FEMA map elevation of the Georges River flood zone and Lot 9 did not hold a 150' circle. Mrs. Kalloch said she had not found a DOT permit for the main entrance and the application was unsigned. Mr. Tower asked if the Board had ever found this application complete and was told it had not. He asked the Board to move ahead with the completeness review, which it did.

Mr. Remian said the application should include a list of the principals or owner of record. The total acreage of each parcel, as well as that of retained land within the subdivision needed to be shown. Mr. Ellis asked if showing the square footage of the parcels satisfied the acreage requirements and the chairman said it did. Mr. Cobey said the wetland designation was clear on the west side, but he was unsure if it went all the way to the water on the east side; Mr. Tower said that it did. Mr. Cobey said that contour lines would be necessary for the storm water management plan. Mr. Tower said the town had a copy of the DEP application showing contours at 2' intervals, but he would provide more legible original drawings.

Mr. Bickford questioned an un-referenced rectangular test pit. Mr. Tower explained that DEP geologist Bill Noble had insisted that the test pits be differentiated according to which of two soil scientists had located them; thus, some were rectangular and some round. Mr. Bickford asked that the respective soil scientists' pits be noted in the legend. Mr. Remian said he did not see well locations on the plan. Mr. Tower said they had been removed and a note included. Mr. Bickford said he thought recommended well locations should be shown and Mr. Cobey added that they were important to show that wells could be located at the required distance from septic systems. Mr. Cunningham said there was an option to not include well locations on the final plan, or to have them shown with a note that the location was a recommendation only. Mr. Tower said the final plan should not be too cluttered, but notes could refer to other drawings. Mr. Remian said a note saying the locations were recommended would be fine and Mr. Cobey agreed. Mr. Cobey stated that it was important to have locations shown at some point, though not on the recorded plan. Mr. Tower suggested showing the 100' setbacks and including a note that allowed moving the systems when the septic system design was submitted to the CEO. The CEO said he would like to see suggested well locations on the plan.

Mr. Cobey asked if the storm water management plan could serve as the drainage plan. Mr. Remian said it could and said the Board would like to have the DEP approved plan. Mr. Ellis ascertained that the fire pond would be

located in the common area and would be the responsibility of the homeowners association. Mrs. Kalloch asked if the Board had received the financial report it had requested. Mr. Remian said that would be part of the review criteria and Mr. Cobey said the letter from Machias Savings Bank was not sufficient. Mr. Muddle said the line for Lot 5 appeared to be mislabeled and Mr. Tower said he would double check it. Mr. Crandall reviewed his list of items needed with the chairman. It was as follows: principals and officers of the corporation, acreage on land retained, 5' interval contours were acceptable, rectangular test pits should be shown in the legend, recommended locations of wells and the approved DEP drainage plan should be included and the proposed lot lines and dimensions be checked

Mrs. Kalloch noted that the DOT permit and financial report were also needed.

Mr. Cunningham cautioned that a vote on completeness, conditional upon submission of additional materials, was a risk because the clock would be running while the Board had an incomplete application.

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, that, based on review of the required plan submissions, the application was incomplete.
Carried 5-0-0

Chairman Remian asked the applicant if he would like the Board to go through an informal review of other criteria for the application and Mr. Tower said he would. Mr. Remian said the PB wanted to see flood elevations on the drawing. He noted that the Board had asked for the DOT entrance permits and a sight distance plan. Mr. Cunningham said it was unclear who had generated the traffic capacity analysis, as it was unsigned. Mr. Tower said he had done the traffic capacity analysis of Pleasant Point Road using the DOT's last traffic count and factoring in the other subdivisions' traffic. Mr. Tower confirmed that his test pits indicated suitability and were not complete designs. Mr. Ellis asked that plume information be included when it was finalized.

Mr. Ellis stated that letters from IF&W and the Maine Historical Preservation Commission [MHPC] would suffice to meet the aesthetic, cultural and natural values criteria. Mrs. Kalloch and Mr. Cobey disagreed, saying those letters referred to the Meduncook Plantation Subdivision. Mr. Remian said he believed there was a significant area where the dock would go into the St. George River. Mr. Tower said he had submitted the entire parcel of land to the MHPC and they had identified only Lot 26 on the Meduncook River as having any prehistoric interest to them; the developer said he thought there was a letter in the file indicating this. Mr. Cobey said that the MHPC report did not identify any exploratory activity on the east side and Mr. Tower said he would provide a letter to clarify that. Mr. Cobey stated that the Board also needed a letter from IF&W concerning the Georges River frontage. Mr. Tower said that would be included in the DEP's review.

Mr. Cobey asked if the view scopes would be shown on the plan and Mr. Tower said the PB had asked him to remove the building envelopes, which defined the view scopes; however, the view scopes were verbally defined in the covenants. The Board was undecided as to whether it would want to see the building envelopes on the plan at some time.

The chairman said that the applicant's 6/30/06 letter from Machias Savings Bank was insufficient proof of financial capability. Mr. Cobey said this letter did not specifically mention the Robbins Mountain Subdivision and the developer's financial capacity to complete the project as shown on the plan. Mr. Remian asked to what extend Mr. Tower was financing the project. Mr. Ellis asked if he had an estimate of the cost. Mr. Tower said costs of \$125,000 were noted on the application. Mr. Cunningham said he did not think \$125,000 reflected the cost of meeting the standards of the subdivision ordinance. Mr. Muddle said the Board needed to know the cost of turning raw land into the plan shown, including drainage, roads and other improvements. Mr. Tower said the cost to complete the project was \$125,000 from this point forward and all costs to this point had been paid. He stressed that there were no public improvements on this project and stated that proof of financial capacity was usually reserved for circumstances where infrastructure construction, if left abandoned, could create a hardship for the town. Mr. Muddle said that did not answer his question and asked what it would cost to put in the road. Mr. Tower replied that it would cost \$125,000 to complete and that the homeowners would be responsible for tree planting and other improvements.

Mr. Bickford said the Board was looking for a statement saying that Mr. Tower had the financial capacity to fully complete this project, regardless of expense. Mr. Cunningham recommended that the PB make suggestions to the applicant, since it was his burden to prove his financial ability. Mr. Muddle said he would like a statement from some financial resource that there was adequate financing to complete the project.

The Board said it wanted to see flood areas depicted. Mr. Remian expressed concern about possible flooding of Pleasant Point Road. Mr. Tower said it was the DOT's responsibility to maintain the roadsides and he would be willing to improve the drainage if the DOT would give permission. He stated that there would be less storm water released on this site after development, though that would not mitigate existing problems. In response to a question from Mr. Cobey, Mr. Tower said the covenant language would be made consistent with the final storm water plan. Mr. Cobey said that Lot 9 would not contain a 150' circle and Mr. Ellis said the developer should review his frontages and buildable areas.

CEO Bickford asked if the covenants specified that the homeowners were responsible for maintenance of the fire pond, drainage and roads. Mr. Tower said this was in the deeds and this language was submitted to the DEP. There was further discussion of this point.

Mr. Cobey maintained that the entry road design was a winter hazard due to a 10% grade and tight turns; he suggested the PB ask for an independent technical review. In addition, he wanted a technical report on the ditch lining on the long road to the entrance. Mr. Remian said he was also concerned about the ditches, due to slopes in the area. Mr. Tower said that the DEP had completed its review on that section of road and described storm water measures in detail; he thought that would satisfy technical review concerns. The chairman stated that Mr. Tower would meet the ordinance road standards.

6. Old Business: None

7. New Business:

Chairman Remian said he would like Mr. Sidell to come and speak with the Board at a workshop about the Flood Plain Ordinance.

Attorney Cunningham said the proposed Subdivision Ordinance changes looked very good and he should have detailed comments prepared by the next day. He did say the mockup he had did not include the original ordinance as its base document and the public would need to see the baseline document for the hearing. The Board scheduled a work session on the ordinance changes for Monday, April 16, at 7:00 A.M. There was discussion as to additional information Mr. Cobey would provide to the attorney.

CEO Bickford reported that he had 4 incoming land use applications, in addition to 22 from Mr. Tower, and asked how many the Board wanted to address in a night. Mr. Ellis said he understood that applications submitted under the old rules and would need to be reviewed under those rules, which did not include provisions for RP due to slopes. The CEO said he had rejected several applications as incomplete and Mr. Tower had resubmitted many of them. Mr. Ellis suggested that new applications be submitted for review under the revised ordinance. Mr. Tower said he had simply added information to his incomplete applications and the Board had 35 days to take action. Chairman Remian said any applications that were incomplete before the moratorium would be reviewed under the new ordinance.

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, to put the by-laws on tonight's agenda.
Carried 4-1-0 (Mrs. Kalloch voted against)

The chairman said he would like procedures for voting included in the by-laws draft. Mr. Ellis proposed that discussion of changes in by-laws take place at a meeting or workshop, rather than between meetings. Mr. Remian suggested adding that discussion to Monday's meeting. Mr. Ellis said that the manual suggested that considerations of conflicts and bias should be taken up before every review and he thought that should be added to the by-laws as a matter of procedure.

8. Adjournment: Mr. Muddle made a motion, seconded by Mrs. Kalloch, to adjourn the meeting at 10:15 P.M.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey
Recording Secretary